

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Eighty-second Session
February 9, 2023**

The Senate Committee on Finance was called to order by Chair Marilyn Dondero Loop at 5:49 p.m. on Thursday, February 9, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Marilyn Dondero Loop, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Dallas Harris
Senator Dina Neal
Senator Rochelle T. Nguyen
Senator Pete Goicoechea
Senator Heidi Seevers Gansert
Senator Robin L. Titus

STAFF MEMBERS PRESENT:

Wayne Thorley, Senate Fiscal Analyst
Cathy Crocket, Chief Principal Deputy Fiscal Analyst
Michael Nakamoto, Chief Principal Deputy Fiscal Analyst
Bryan Fernley, Legislative Counsel
Asher Killian, Chief Deputy Legislative Counsel
Joko Cailles, Committee Secretary

OTHERS PRESENT:

Nikki Bailey-Lundahl, Director of Government Affairs, Nevada Mining Association

CHAIR DONDERO LOOP:

I open the hearing on Senate Bill (S.B.) 124. We will consider Proposed Amendment No. 3515 ([Exhibit C](#)) to S.B. 124.

SENATE BILL 124: Revises provisions relating to the tax upon the net proceeds of minerals and royalties of mining operations. (BDR 32-908)

MICHAEL NAKAMOTO (Chief Principal Deputy Fiscal Analyst):

I will present on S.B. 124 as introduced. The measure has to do with the tax on the net proceeds of minerals. Under current law, the tax is imposed at a rate of around 2 percent to 5 percent depending on certain factors—including the ratio of gross proceeds to net proceeds.

There are exceptions to this. The geothermal establishment is taxed exclusively at the property tax rate of the district where the respective operation is located. If net proceeds of an operation are in excess of \$4 million, the rate is automatically 5 percent. Royalties—the portion of the proceeds that are paid for the privilege of mineral extraction to the owner of a piece of real property—are taxed at 5 percent. In any instance, the minimum rate that can be imposed is the property tax rate of the district where a given operation takes place.

Local governments, including cities, counties and school districts, get a proportionate share of the tax based on the property tax rate of their respective districts. The State will get the 17-cent portion that goes into the Consolidated Bond Interest and Redemption Fund, similar to the property tax. Under statute, anything above those amounts is distributed to the General Fund, but it will instead be distributed to the State Education Fund beginning in fiscal year (FY) 2023-2024 based on the actions of lawmakers during the Eighty-first Session.

Sections 1 and 2 of S.B. 124 pertain to the distribution of a certain portion of the net proceeds of minerals. Specifically, I refer to the rate dedicated to kindergarten through Grade 12 (K-12) education.

Prior to the implementation of the Pupil-Centered Funding Plan, the Nevada Plan required the net proceeds of minerals tax from what would be the 75-cent rate be distributed directly to school districts. This money was treated as local revenue for school districts under the Nevada Plan.

The mechanism used for that distribution was the same as any other portion of the net proceeds directed to local governments. In *Nevada Revised Statutes* (NRS) 362.170, there is a requirement that all local revenues from the net proceeds of minerals be sent to counties, with the respective county

treasurers then being required to apportion proceeds to other local entities with a property tax rate. County treasurers kept a 5 percent commission of those proceeds, of which 3 percent was directed to the county general fund, and 2 percent was directed to county assessors for technology improvements and office upgrades.

Senate Bill No. 543 of the 80th Session changed the K-12 funding formula from the Nevada Plan to the Pupil-Centered Funding Plan. The tax revenues are now directed by statute to the State Education Fund instead of school districts directly. The relevant subsection of S.B. No. 543 of the 80th Session can be found in NRS 387.1212.

Senate Bill No. 543 of the 80th Session did not change the requirement for tax revenues to be parceled out by counties. This means the Nevada Department of Taxation must give education money to counties, with the counties depositing it in the State Education Fund after their 5 percent commissions.

Sections 1 and 2 of S.B. 124 change statute so the Nevada Department of Taxation can directly deposit the education money into the State Education Fund instead of having counties act as intermediaries. Senate Bill 124 would, by implication, remove the ability for counties to retain 5 percent of these respective proceeds for the purposes outlined in NRS 362.170.

Sections 3 and 4 of S.B. 124 deal with a separate issue related to the net proceeds of minerals tax. Prior to the passage of S.B. No. 3 of the 31st Special Session, the operators who were subject to that tax would pay their tax based on their actual mining activity in the prior calendar year (CY). On or before May 10 of each calendar year, operators would remit their payment to the Nevada Department of Taxation for the State and local portions.

Senate Bill No. 3 of the 31st Special Session required an additional payment to be made by the operators based on estimated payments for the current calendar year. This began in CY 2021. In FY 2020-2021, a payment was made for the General Fund portion of the tax based on what operators estimated their mineral activity would be on or before March 1, 2021.

Later in the year, operators would make the actual payments for CY 2020 on or before May 10, 2021. The effect was to get two years' worth of revenue for

the General Fund in FY 2020-2021. This incorporated the estimated payment for CY 2021 and the actual payment for CY 2020.

Senate Bill No. 3 of the 31st Special Session was drafted so that prepayments would continue through successive years with the ability for mining operators to true up once they knew what the actual mineral activity of a given calendar year was. Prepayments were intended to stop in CY 2024.

As approved, we would receive a double tax payment for FY 2020-2021, then we would receive the estimated payments that would go in FY 2021-2022 and FY 2022-2023. Ending prepayments under the schedule of S.B. No. 3 of the 31st Special Session would result in no revenues being collected for FY 2023-2024, as there would be no estimated payment made for CY 2024. Fiscal staff would have gone before the Economic Forum and forecasted no revenue for the net proceeds of minerals tax to the General Fund in FY 2023-2024.

Assembly Bill No. 495 of the 81st Session directed, effective FY 2023-2024, this portion of the net proceeds of minerals tax would go to the State Education Fund instead of the General Fund. The forecasts approved by the Economic Forum pertained to current statute where no revenues go to the General Fund from the net proceeds of minerals tax in FY 2023-2024 and FY 2024-2025. The consensus forecast made by Fiscal staff and the Office of the Governor, Office of Finance stated there will be no net proceeds of minerals revenue coming from this portion of the tax in the State Education Fund in FY 2023-2024 either. The resulting funding hole is to be transferred from the State Education Fund to the General Fund.

Sections 3 and 4 of S.B. 124 modify sections 8 and 12 of S.B. No. 3 of the 31st Special Session to change the expiration date of the tax prepayments from June 30, 2023, to June 30, 2022. The effect of that is, on or before March 1, 2023, mining operations will not be required to make their estimated payments. The hole is moved so mining operators would pay their CY 2023 tax on or before May 10, 2024. The money received would be credited to the State Education Fund. These two sections essentially move the revenue hole from the State Education Fund in FY 2023-2024 to the General Fund in FY 2022-2023.

BRYAN FERNLEY (Legislative Counsel):
I will present on [Exhibit C](#).

Proposed Amendment No. 3515 to [S.B. 124](#) is intended to ensure the net proceeds of minerals tax is distributed in accordance with the Nevada Constitution. The amendment also aims to ensure the provisions of [S.B. 124](#) are clear and drafted in a way that carries out the legislative intent to implement the Pupil-Centered Funding Plan with respect to the net proceeds of minerals tax. It is a technical amendment to ensure the NRS operates according to the actual intent of lawmakers.

ASHER KILLIAN (Chief Deputy Legislative Counsel):
Three technical changes are contained in [Exhibit C](#). Each of these is intended to ensure the net proceeds of minerals tax is properly distributed into the State Education Fund and Education Stabilization Account in a way that complies with the Nevada Constitution. [Exhibit C](#) aims to clarify the provisions of the Pupil-Centered Funding Plan and ensure lawmakers' intent is properly reflected.

I will speak to the first technical change. Mr. Nakamoto touched on how money moves from the net proceeds of minerals tax into the State Education Fund under NRS 387.1214. Once the revenue moves into the State Education Fund, it is then directed back to the appropriate school districts as it did under the Nevada Plan. To the extent that a school district is entitled to any money under the Pupil-Centered Funding Plan, the net proceeds of minerals revenue is the first money distributed to school districts to satisfy apportionment requirements under the Pupil-Centered Funding Plan.

When a school district would have been entitled to more money from the net proceeds of minerals than it would be allocated under the Pupil-Centered Funding Plan, existing law creates a continuing appropriation to the school district of that excess amount to mitigate the cyclical nature of the mining industry. The school district continues to receive the entirety of the net proceeds of minerals tax. It just flows through the State Education Fund first, accounted as education dollars then distributed to the districts.

The first technical change pertains to Section 2.3 of [S.B. 124](#). Section 2.3 of [S.B. 124](#) makes it clear the money is not subject to reversion to the Education Stabilization Account. Ordinarily, existing statute dictates that the total ending

balance a school district maintains at the end of each fiscal year of more than 16.6 percent is reverted to the Education Stabilization Account. This change in Section 2.3 of S.B. 124 clarifies that the excess mining money does not revert to the Education Stabilization Account. It remains with the respective school districts.

I will now speak to the second technical change. Statute indicates that school districts must revert ending fund balances in excess of 16.6 percent to the Education Stabilization Account. There was a transitory provision in S.B. No. 543 of the 80th Session that accounted for a situation where some school districts already had a reserve of more than 16.6 percent. The provision indicated that any amount in excess of 16.6 percent by the end of FY 2019-2020 would become part of a school district's new base. Exceeding that level of reserves in future years would mean reverting the extra money to the Education Stabilization Account.

To the extent that a school district's reserves dropped below the new base, it effectively ratchets down to that new level until the 16.6 percent is hit. This applies to all school districts. Senate Bill No. 543 of the 80th Session was passed in advance of the Pupil-Centered Funding Plan becoming effective, complicating the new mechanism. Section 2.3 of S.B. 124 would revise this mechanism now that the Pupil-Centered Funding plan is in effect.

Any money school districts received on or before June 30, 2020, the end of the benchmark year, is money that is not subject for reversion to the Education Stabilization Account under any circumstances. Instead, any excess of 16.6 percent or more of Pupil-Centered Funding Plan money that a school district retains would need to be deposited to the Education Stabilization Account.

The third technical change pertains to NRS 387.1214, declaring that the money a school district receives from the net proceeds of minerals is deemed to be the first money received by said school district from the Pupil-Centered Funding Plan. This was always intended as an accounting measure to ensure the net proceeds of minerals revenue were the first dollars in and out, so we know which dollars are available at the end of each fiscal year for being turned back to the Education Stabilization Account if a school district maintains an excess reserve. The change in section 2.5 of S.B. 124 makes this intent explicit—not

only are the dollars from the net proceeds of minerals the first dollars into the school district funds, but they are also the first dollars out.

SENATOR GOICOECHEA:

My concern pertains to the 5 percent commission initially kept by the counties. This commission would be removed. Of the 5 percent, 2 percent goes to county assessors so properties can be centrally assessed. They are entitled to the 2 percent technology fee. I do not believe we can remove that 2 percent fee—it is set in statute.

We created the technology account, yet we are sweeping these revenues under S.B. No. 543 of the 80th Session and the new Pupil-Centered Funding Plan. I do not believe we can access the 2 percent that goes to technology.

It is not much money, but we should not have the ability to take money that is statutorily directed to counties for assessments. County assessors are entitled to the 2 percent fee—this is not a pass-through. This is the assessors' fee for dealing with properties, including mine properties where we yield the net proceeds funds.

MR. FERNLEY:

The 5 percent commission was enacted by the Legislature, so lawmakers have the authority to redirect or remove the funds. In this case, dollars that are supposed to be deposited to the State Education Fund will no longer have to go through counties first.

SENATOR NEAL:

How much money is yielded from the 2 percent directed to county assessors?

MR. NAKAMOTO:

Based on information from the Nevada Department of Taxation regarding the actual transfer to the counties, the amount would have been approximately \$566,000.

SENATOR NEAL:

Is that per county or to all counties?

MR. NAKAMOTO:

That figure is combined for all counties.

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SENATOR SEEVERS GANSERT:

Would 5 percent of the net proceeds of minerals revenue still go to counties, exclusive of the 75-cent portion directed for education?

MR. NAKAMOTO:

Yes. Outside of the 75-cent exclusion, net proceeds of minerals revenue would still be subject to the 5 percent withholding by counties.

SENATOR SEEVERS GANSERT:

How much would counties get with the 75-cent exclusion?

MR. NAKAMOTO:

I will follow up with that information.

SENATOR TITUS:

I want to ensure this will not inhibit counties from using bonding in a future capacity. Would S.B. 124 affect county bonding capacity and debt service?

MR. NAKAMOTO:

Fiscal staff does not believe the redirection of funds under S.B. 124 would affect bonding capacity and debt service for county governments. The redirection of funds only applies to the 75-cent portion of the net proceeds of minerals tax directed to education.

SENATOR GOICOECHEA:

Would school districts have the ability to engage in bonding and debt service?

MR. NAKAMOTO:

Fiscal staff does not believe school districts would be precluded from bonding or debt service.

NIKKI BAILEY-LUNDAHL (Director of Government Affairs, Nevada Mining Association):

The Nevada Mining Association is proud to be the State's partner in education, creating quality jobs and helping finance critical services. The mining industry has taken the extraordinary step of prepaying taxes over the past three economic recessions.

It does this to bridge the gap between economic crises and budget shortfalls. If any prepayment would help the State, we see no issue with it and are neutral on S.B. 124.

CHAIR DONDERO LOOP:

I close the hearing on S.B. 124. We will now have a work session on S.B. 124.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 124 WITH THE PROPOSED AMENDMENT NO. 3515 IN [EXHIBIT C](#).

SENATOR HARRIS SECONDED THE MOTION.

SENATOR GOICOECHEA:

Would we have to modify tax collection days through S.B. 124, creating a \$70 million hole that would have to be appropriated through the General Fund?

WAYNE THORLEY (Senate Fiscal Analyst):

You refer to the \$70 million General Fund hole for FY 2022-2023. This would reduce the existing fund balance in the unrestricted General Fund. It would not reduce money already appropriated by the Legislature.

SENATOR GOICOECHEA:

To clarify, this would result in a smaller ending fund balance in the General Fund and would not require appropriations?

MR. THORLEY:

Yes.

SENATOR TITUS:

I will vote no on the motion. There has not been enough time to reach out to counties that will be affected. We need more information on the measure's impact. I might come around in the future.

SENATOR GOICOECHEA:

I will vote to amend and do pass S.B. 124 as amended but reserve my right to change my vote on the floor as I receive more information.

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SENATOR SEEVERS GANSERT:

I will also vote to amend and do pass the measure as amended while reserving my right to change my vote on the floor.

THE MOTION CARRIED. (SENATOR TITUS VOTED NO).

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CHAIR DONDERO LOOP:

Seeing no public comment, I adjourn this meeting at 6:24 p.m.

RESPECTFULLY SUBMITTED:

Joko Cailles,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
	C	1	Bryan Fernley / Legislative Counsel Bureau	Proposed Amendment No. 3515 to <u>S.B. 124</u>